

foreign element in China,<sup>32</sup> although this principle is seriously criticised by some Chinese scholars as being too rigid to be adopted as an exclusive conflicts rule for torts.<sup>33</sup> Two exceptions to this basic rule are stipulated in Chinese law, namely the law of the country of both the plaintiff's and the defendant's nationalities and the law of the country of their domicile.<sup>34</sup> It should be mentioned that neither the *lex fori* theory nor the English theory of the proper law of the tort has been accepted in Chinese private international law although some Chinese private international law scholars are very interested in them.

Chinese practice in dealing with compensation in torts cases with a foreign element is of interest. Since the compensation standard stipulated by the law and the relevant regulations is comparatively low for cases with a foreign element, the defendant in fact pays an amount higher than this standard by way of gratuity.

XU GUOJIAN

## DAMAGE AWARDS IN DEFAMATION CASES: AN ITALIAN VIEW

### A. Introduction

Striking the balance between the individual's right to reputation and freedom of the press has been a common goal throughout the centuries for both the courts and legal scholars in most democratic countries, whether they belong to the common law family or the Romano-Germanic family.

Case law and literature on the subject are immense and it is difficult to find one's way through the deluge of books, essays, notes and commentaries. One notices, however, that one of the most crucial aspects of this subject—both from the plaintiff's and the defendant's point of view—has received relatively little attention: the amount of damages that will be awarded to the successful plaintiff.<sup>1</sup>

This is not to imply that damages awards are not subject to careful scrutiny or, sometimes, to heated debates. Recall, for example, the famous case of *New York Times v. Sullivan*,<sup>2</sup> in which the newspaper had been condemned to pay

32. General Principles of Civil Law of the PRC, Art.146, para.1: "In the case of compensation for damages resulting from a tort, the law of the place in which the tort takes place shall be applied." This has been generally regarded by Chinese scholars as an acceptable rule for torts with foreign elements: see Han Depei, "Qinquan Xingwei de Zhunjufa" (applicable law for tort), in *Zhongguo Dabaike Quanshu. Faxue* (Encyclopaedia of China. Jurisprudence), (1984 Beijing, Shanghai), pp.473-474.

33. Yao Zhuang and Ren Jisheng, *Guoji Sifa Jichu* (Basic Knowledge of Private International Law), (1982, Beijing), p.86; Jin Pengnian, "Guoji Sifa Fazhan de Yige Xinqushi" (A New Trend of Development of the Private International Law), (1989) 3 *Faxue Zaxhi* (Journal of Jurisprudence) 20.

34. General Principles of Civil Law of the PRC, Art.146, para.1: "If both parties (in a tort case) are of the same nationality or have their domicile in the same country, the law of their native country or of the country in which they have their domicile shall be applied."

1. Consider e.g. *Gatley on Libel and Slander* (8th edn): in a 750-page book only ten pages are devoted to the assessment of damages in libel cases. And, across the Atlantic, in R. D. Sack, *Libel, Slander, and Related Problems* (1980) only seven pages out of 700.

2. 376 U.S. 254 (1964).

the enormous—in those days—sum of US\$500,000; or, more recently, the *Sutcliffe v. Pressdram Ltd* case.<sup>3</sup>

What really seems to be lacking is an enquiry into the criteria used by the courts (and I include in this term also the juries) to award sums that range from one penny to a million pounds or more.

The difficulty does not arise (or, at least, is of a minor degree and common to other torts) for pecuniary losses that flow from the defamatory statements (e.g. the loss of goodwill for a business, or of customers in the case of a shop, or of clients in the case of professionals). Such losses can be calculated in a reasonably precise way, for example by comparing balances or incomes before and after the libel and establishing the causation between the tort and the damage.

The crucial question concerns the most typical consequences of damage to reputation: non-pecuniary losses. Libel may not affect income, but surely it alters the relationship between the defamed and the community in which he lives. Libel also entails psychological consequences, which typically take the form of a sense of shame, anguish, mental suffering, etc.

Although each person is unique in both his psychological features and his social relationships, this must not prevent us from trying to determine the common elements of damage to reputation.

#### B. The Italian Position

In this article the recent Italian experience will be examined in the hope that it may be of some help, at least as a starting point. In Italian law—as in most continental systems—libel by the press has practically always been considered a criminal offence. It is punished, according to Articles 595 and 596 of the Penal Code, and Article 13 of the 1948 Law on the Press, with a prison sentence ranging from one to six years' imprisonment or with a fine of up to £4,000. An essential element of criminal libel is the *mens rea* of the accused. If therefore he is guilty only of negligence there is no crime. The truth of the defamatory statement is, in some cases, a defence. However, if the accusation is related to the private life of the defamed (e.g. sexual behaviour with a partner) truth is no defence, and one can quote the maxim attributed to Lord Mansfield: "the greater the truth, the greater the libel". Truth is no defence also when it is expressed in a derogatory or insulting way, since it offends the basic dignity of the accused. Since the claim that the statement is true is a defence the defendant bears the burden of proving it, although he need not prove the "historical truth" of the facts but may limit himself to proving that what he wrote at the time reasonably appeared to be truthful on the basis of the available sources of information.<sup>4</sup>

3. [1990] 2 W.L.R. 271.

4. Until recently the Italian courts followed the rule, which is still applied in English law (except to the extent that unintentional and non-negligent defamation may be excused under s.4 of the Defamation Act 1952), according to which the defendant (or the accused) does not discharge his burden by proving that he honestly believed his statement to be true; he must instead prove that it was true in fact (*Peters v. Bradlaugh* (1888) 4 T.L.R. 414, Div. Ct.). In this last decade, however, the Italian courts, especially the lower ones, have been increasingly applying a "truthfulness standard" based on the proof, by the accused, that he did not act negligently.

Libel is also a tort, but until recently plaintiffs, following a well-established tradition, have practically always preferred to sue the defamer in a criminal court. The preference for criminal sanctions can be explained by reference to the fact that the defamed person's first reaction is, generally, to have his reputation vindicated. Obviously, in a criminal system the primary aim is punishment and retribution, and not compensation for damage. Therefore, the criminal judge—even though the Code of Criminal Procedure gives him the power to award damages if the plaintiff appears in court as a "*partie civile*"—generally remands the evaluation of damages to the civil judge in a subsequent trial. This results in a useless duplication of judicial proceedings, but it is not a unique feature of libel trials, as it is common to all the cases where there is an overlap of crime and tort (e.g. traffic accidents or medical malpractice).<sup>5</sup>

Criminal libel therefore does not—in the general practice of the courts—satisfy the need of the plaintiff for pecuniary reparation. Nor are the other available remedies particularly effective. Thus, the right of reply, which is provided for in the 1948 Press Act, is limited to 30 printed lines, which are generally followed by a comment by the newspaper confirming its version of the facts. As a well-known journalist put it, a correction is bad news printed twice.

Further, the criminal trial rarely satisfies the plaintiff's need for vindication. A statistical survey of the decisions of the *Tribunale Penale di Roma* (the capital's criminal court of first instance) dealing with libel cases revealed that in only a minority of cases was the accused condemned.<sup>6</sup> The judgments never came close to the harsh six years' imprisonment which is the maximum provided for by the 1948 Press Act. When a prison sentence was given it was mostly limited to a few months and, invariably, suspended; more frequently the sanction took the form of a fine of a few hundred pounds.

The survey, which analysed over 1,200 decisions delivered between 1978 and 1983, indicated that the accused was found guilty in only 150 cases. In a further 250 he was acquitted, and in the remainder the complaint was rejected on other grounds, mostly as a result of the recurrent general amnesties by which the Italian Parliament tries to solve the paralysis of criminal courts by relieving them of what it considers minor offences.

Against this discomfiting (for the plaintiff) background it is not surprising to see that those defamed by the media have increasingly resorted to tort actions claiming damages for pecuniary and non-pecuniary losses.

The turning point is commonly taken to be the 1984 decision of the *Tribunale Civile di Roma* (the capital's civil court of first instance) in *Pannella v. La Repubblica*.<sup>7</sup> The action was brought by a civil rights leader who had been accused in an editorial of a leading newspaper of connivance with a terrorist group. The decision is noteworthy not only for the unprecedented amount of

5. Some of the reasons for this practice—which is common also to other continental systems—are pointed out by B. S. Markesinis, "Comparative Law: A Subject in Search of an Audience" (1990) 53 M.L.R. 1, 16.

6. Centro Calamandrei (V. Ricciuto and V. Zeno-Zencovich (Eds)), "L'orientamento del Tribunale di Roma in tema di diffamazione a mezzo stampa: un'indagine statistica" (1986) *Il diritto dell'informazione e dell'informatica* 207.

7. Trib. Roma 27 Mar. 1984 (1984) *I Foro italiano* 1687.

damages awarded (70 million lira, approximately £30,000) but also for the criteria the court used to arrive at this sum.

The court, while denying that the plaintiff suffered any pecuniary losses, listed two elements for the evaluation of non-pecuniary damages caused by defamation: the nature of the defamatory accusation, i.e. its capacity to injure reputation; and the dissemination of the defamatory statement, i.e. how many persons received the libellous news.

The decision stressed the obvious seriousness of a (groundless) accusation of connivance with a terrorist group, and set down five criteria for evaluating the harmful effects of the publication:

1. the sales and the readership of the newspaper (in this case over one million readers);
2. the position of the article (in this case the editorial had been published in the first pages and with a big headline);
3. the kind of readers of the newspaper (according to the decision the readers of the editorial belonged to the social and cultural circles to which the plaintiff's political action was mostly addressed);
4. the standing of the plaintiff (according to the decision an immaculate reputation was considered an essential asset for a politician);
5. the identity of the defamers, both from a social and economic point of view (in this case the newspaper had a high degree of credibility and was a profitable business).

The decision was widely and, on the whole, favourably discussed in the legal journals, especially the part that dealt with the damages award. Prior to that decision the sums awarded had never reached 10 million lira (£4,000).

### C. The Civil Courts' Decisions post-Pannella

From the *Pannella* decision onwards plaintiffs (and their lawyers) began to shift their legal actions from the criminal courts to civil courts and a great number of decisions have been handed down by the civil courts. Their careful analysis reveals that in general all the decisions apply the same criteria to determine the award, i.e. the nature and the dissemination of the defamatory statement. However, a striking feature of these judgments is that their final sums differ widely and that the courts do not seem to be aware of the existence of precedents which might somehow guide them in their evaluation. One must, of course, at this stage, remind common law readers that civil law lawyers rely mostly on the Code, and that precedent is used mainly in the form of a juridical norm in which the facts and the conclusions of the judgment are omitted.<sup>8</sup>

Let us consider a few examples.<sup>9</sup> An accusation of having committed a minor town planning offence, published in a newspaper with one million readers under

8. It is common for foreign scholars to point out that often in Italian sentences the question of law "is treated entirely in the abstract—as in an article of a code—without any reference to the concrete factual circumstances of the case": M. Cappelletti, J. H. Merryman and J. M. Perillo, *The Italian Legal System. An Introduction* (1967), p.438.

9. For a thorough examination of the various cases see V. Ricciuto and V. Zencovich, *Il danno da mass-media* (1990).

a relatively small headline, produced an award (25 million lira, i.e. £10,000)<sup>10</sup> equal to that made in another case where the accusation was that the plaintiff had connections with the Mafia, published on the front page of a newspaper with 3 million readers.<sup>11</sup>

The same accusation, against the same person, published in two different newspapers, the first with a readership of one million readers, the second of 800,000, produced in the first case<sup>12</sup> an award of 10 million lira (£4,000), in the second<sup>13</sup> 120 million lira (nearly £50,000), that is, 12 times as much!

The accusation of being the head of a drug-peddling organisation published by a local newspaper in Rome with a readership of approximately 150,000 resulted in an award of 20 million lira (£8,000),<sup>14</sup> twice the amount awarded for an accusation of rape published by a newspaper in Genoa of similar readership.<sup>15</sup>

The differences are even more striking if the awards are related simply to the readership of the defendant newspaper (i.e. the total sum awarded divided by the number of readers): the sums awarded range from 5 lira (about one-fifth of a penny) to over 250 lira (about ten pence) per reader, that is, a 1 to 50 relationship!

It is not easy to discover the reasons for such a wide fluctuation: one would have to analyse each case, examining not only the underlying facts but also the submissions of the parties before definite conclusions could be formulated. One may, however, advance a few reasonable hypotheses.

First, there is a real lack of information (or, more precisely, of circulation of information) not only between the courts and the bar, but even within the same court. Even when the decisions are published in law reports or annotated in legal journals, it is by no means certain that another judge or another lawyer will ever read them. Each decision is, therefore, seen as if it were unique and in no way related to any other.

Second, it is apparent from the various decisions published in law reports that, although the courts always refer to the readership of the medium in which the defamatory article has been published, they hardly ever indicate the exact figures and generally resort to vague indications (great circulation, limited circulation, etc.). This may be due in part to the fact that the data is not often available to lawyers or judges, as it is published in specialised media reviews. In the circumstances, it is quite natural that the court decisions are also vague on such matters.

Finally, it would appear that the amount of the award depends on much less objective elements, such as the identity of the plaintiffs. The analysis of the cases suggests that those who receive the highest awards (both on an absolute scale and on an award/readership basis) are judges who have sued the newspaper they feel has defamed them. Considered on an award-per-reader basis the plaintiff/judge usually receives an average sum of approximately 100 lira (four pence) per reader. This means that if the defamatory statement is published in a

10. Trib. Roma 24 Jan. 1989 (1989) *Il diritto dell'informazione e dell'informatica* 930.

11. Trib. Roma 14 July 1989, *idem*, p.952.

12. Trib. Roma 8 Aug. 1988 (1990), *idem*, p.1030.

13. Trib. Napoli 11 Oct. 1989, *idem*, p.1033.

14. Trib. Roma 6 Apr. 1988 (1988), *idem*, p.837.

15. Trib. Genova 24 Oct. 1986 (1987), *idem*, p.239.

newspaper with a readership of 500,000 he is awarded approximately 50 million lira (£20,000); if the readership is one million readers, 100 million lira (£40,000).

Next to judges come politicians, who often resort to legal action against attacks made on them by the press. The landmark case, *Pannella*, originated from such a situation. In this category the plaintiffs receive awards which range from 50 to 70 lira (from two to three pence) per reader of the defamatory article.

On the lowest step of the scale are such plaintiffs as businessmen and ordinary citizens, who rarely receive more than 20 lira (less than a penny) for each reader of the newspaper: for example, a tax collector whose name was associated with organised crime in a news magazine with a readership of 3 million was awarded 15 million lira (£6,000);<sup>16</sup> a painter accused of forging master-works in a newspaper with a readership of 1,700,000 was awarded 40 million lira (£16,000).<sup>17</sup>

#### D. What Are the Criteria Used?

Even if one were to detect exactly the reasons for the fluctuations in damages awards and persuade the courts to apply the same criteria when assessing awards, there still remains one important, unanswered question: why fix the amount at, e.g., £10,000, and not £1,000 or £100,000? Let us imagine that all defamatory statements were equally damaging, that they were published in newspapers of similar circulation and on the same page. We feel that the courts ought to award to each plaintiff the same sum, but we do not know *what* sum.<sup>18</sup>

It is sufficiently clear that the nature and the dissemination of the defamatory statement can be expressed on an objective basis (one million readers are more than 100,000;<sup>19</sup> the front page is read by more people than an inside page; the accusation of having committed a murder is more serious than that of a minor offence, etc.). However, these distinctions have to be translated into monetary terms. This operation is essential if one wishes to avoid a case-by-case decision left to the sense of fairness of the court, which is among the principal reasons for disparity in the awards. In the end the question turns out to be: how much is reputation worth?

The answer is far from easy, but this is a task that legal scholars in societies widely influenced by the media must attempt to accomplish.<sup>20</sup>

16. Trib. Milano 18 Sept. 1989 (1990), *idem*, p.144.

17. Trib. Roma 12 Oct. 1988 (1989), *idem*, p.960.

18. Of course in common law countries one must consider that "Judges are trained, and bound by precedent, to have regard to awards made by other judges in similar cases. Juries are not": *Sutcliffe v. Pressdram Ltd* [1990] 2 W.L.R. 271, 287; but in the same decision Lord Donaldson MR considers how "to improve the guidance given to the juries, whilst refraining from fettering a proper exercise of their discretion".

19. In *Dingle v. Associated Newspapers* [1961] 2 Q.B. 162, 192, Lord Devlin expressed the opinion that "the law requires and permits that damages should be measured by the extent of the publication". And in *Broadway Approvals v. Odhams Press* [1965] 1 W.L.R. 805 the number of readers of the defendant newspaper was taken into account but to reduce the jury award, which was considered excessive.

20. The problem is often dismissed, being described as impossible or groundless: "The insoluble problem of assessing compensation hardly requires comment. The vain attempts made to apply some form of arithmetical process are almost comically inadequate": A. I. Ogus, *The Law of Damages* (1973), p.239. "In actions for libel or slander the amount of damages is peculiarly within the discretion of the jury, for there can be no fixed or mathematical rule on the subject": *Behrendt v. Times-Mirror Co.* 85 P.2d 949 (1938).

#### 1. Comparison with personal injuries

A first solution might be found by considering injuries to reputation as if they were physical injuries.<sup>21</sup> As a result of automobile circulation (and of the great number of injuries related to traffic accidents), as well as of workmen's compensation legislation, medical examiners worldwide have attempted to set out a rational classification of personal injuries. Physical disabilities are placed on a scale which ranges from total impairment and inability to engage in gainful occupations or in other activities, to minor incapacities which only partly reduce the physical functions of the injured person.

In the Italian legal system the damages arising from personal injuries are calculated by multiplying the percentage of incapacity by the income of the injured person and then capitalising it according to his age. One could apply the same procedure for assessing damages from libellous statements.<sup>22</sup> But even if there were a general consensus on which level of the scale to place injuries to reputation (equivalent to a 10 per cent disability? or 15 per cent? or more?), there are some obvious flaws in transposing such a system to defamation cases. First, as we have seen, not all libellous statements are equally damaging; the nature of the accusation, the dissemination of the statement, etc., have to be taken into account. Therefore, the percentage of disability should vary from case to case and from person to person.

Second, it should be borne in mind that the assessment of damages in personal injuries claims has generally been related to the ability of the injured person to engage in gainful occupation. It tends, therefore, to compensate pecuniary losses, whereas in the case of damages to reputation our main difficulty is in assessing non-pecuniary damages. On the other hand, it is difficult not to consider the awards assessed for physical injuries: although reputation is an extremely valuable aspect of the human person, both from a social and psychological perspective, it does not appear realistic to value it higher than life itself.

#### 2. The profits of the publishing medium

A second solution might be found by considering the profits of the medium which has published the defamatory statement. For example, if a magazine costs 50 pence and sells 500,000 copies one could establish the award in terms of a percentage of the total sum obtained through the sales (£250,000): 5 per cent for minor defamations, 10 per cent for serious defamations, 15 per cent for very serious defamations.

This method, as well, has its weaknesses. It does not take into consideration

21. See Lord Diplock's opinion in *McCarey v. Associated Newspaper Ltd* (1965) 2 Q.B. 86, 109 according to which "It is, I think, legitimate as an aid to considering whether the award of damages by a jury is so large that no reasonable jury could have arrived at that figure if they had applied proper principles, to bear in mind the kind of figures which are proper, and have been held to be proper, in cases of disabling physical injury." This approach was not, however, shared by Lord Hailsham in *Broome v. Cassell & Co.* [1972] A.C. 1027, 1071.

22. In *Dixon v. Newsweek* 562 F.2d 626 (1977) life expectancy tables were employed to determine future injury to reputation that is expected to occur after the trial.

advertising profits, that can be very high and even preponderant compared with the sales; and it cannot be applied to media that are not sold (for example television, or periodicals distributed on a gratuitous basis). But the main objection is that there does not appear to be any direct relationship between the price of the medium (which is the result of a market analysis and may also be influenced, as it is in Italy, by public subsidies) and the damage suffered by the plaintiff.

### 3. Advertising revenue of the publishing medium

A third solution might be that of using the advertising fees of the medium as a guideline for assessing the amount of the award. Advertising fees have the advantage of being the result of several objective elements: readership (and not only circulation), the position of the advertisement, the amount of space (or time) occupied. One could calculate how much the defamatory article would have cost if it had been replaced by an advertisement. That sum could be varied with the age of the plaintiff or multiplied by an index number (yet to be fixed) representing the nature of the accusation and the standing of the defamed person (on the lowest level one would find persons who already have a bad reputation, at the highest level those for whom an unblemished reputation is of vital importance, such as a religious leader).

Here too there are some obvious objections: reputation is different from physical ability and, generally speaking, tends to grow—rather than decrease—with age. And individual and collective memory of disreputable accusations tends to fade with the passing of time. It would be unfair if a teenager, who has a lifetime to build himself a new reputation, were awarded more than a middle-aged professional who will be shunned by colleagues and acquaintances for the rest of his career. But, above all, what is not altogether clear is why awards should be based on economic elements which do not concern the plaintiff but the defendant. Damages would tend to have a punitive—rather than compensatory—nature.

### E. Conclusions

It is clear that there are no easy answers to the difficult question of how to assess damages for non-pecuniary losses that result from defamation. One point is, however, clear: it is essential to collect, classify and compare decisions and awards in the different countries and legal systems.<sup>23</sup> Such information, if made available to the courts and to lawyers,<sup>24</sup> can help avoid the most significant (and unjustified) fluctuations in the awards.

The second stage—establishing rational parameters for the correct evaluation

23. The suggestion—in a broader context—has been made by Professor Basil Markesinis, *op. cit. supra* n.5.

24. But one should bear in mind the caveat of Lord Denning who, in *Ward v. James* [1966] 1 Q.B. 273, 302 (a personal injury case), expressed the view that the result of referring to the jury comparable cases “would be that the minds of the jury would be distracted from the instant case and left in confusion”. The view is considered valid by Lord Donaldson MR in *Sutcliffe v. Pressdram Ltd* [1990] 2 W.L.R. 271, 289.

of the damages—can be reasonably developed using this data with a blend of sound good judgment and of imagination.<sup>25</sup>

VINCENZO ZENO-ZENCOVICH

## THE INSTITUTION OF THE VISITOR IN ENGLISH AND OVERSEAS UNIVERSITIES: PROBLEMS OF ITS USE IN NIGERIA

### A. Introduction

The crises in the Nigerian university system over the past few years and the resultant visitatorial responses have prompted a rather cacophonous debate as to what is the exact role of the Visitor in the management of the universities.<sup>1</sup> This debate has been extended to the courts and has also received considerable treatment in academic circles.<sup>2</sup> But few paid much attention to this problem concerning the internal management and discipline within the universities until very recently.<sup>3</sup>

The Visitor<sup>4</sup> was to be seen only during glamorous university ceremonies, especially the convocations and graduation ceremonies. Consequently, scholarly analysis of his role in the university system was virtually non-existent and, in any case, such an exercise would have been considered mundane and not worthy of serious research efforts.<sup>5</sup> The myth of the “ceremonial nature”<sup>6</sup> of the Visitor’s

25. I am deeply grateful to Professor B. S. Markesinis for his encouragement and help with the first draft of this article.

1. Nearly all the universities in Nigeria have experienced some form of closure due to staff and student unrest. There have been serious protests from the campuses about the series of unpopular policies of the government in the wake of the serious economic problems that have beset Nigeria in the past four years. The Academic Staff Union of Universities (ASUU) was banned in the process and a period of mutual suspicion between government and intellectuals came into being. The government’s regular response of instituting visitations has been generally resented by intellectuals as infringing the traditional, cherished academic freedom.

2. See Shyllon, “Natural Justice for Sacked Ibadan Professors and Rusticated Students” (1986) 2 U. Ibadan L.R. 28–35, where he analysed the cases of *Akintemi v. Onwumechili* [1985] 1 N.W.L.R. 68; *University of Ibadan v. Asein* (unrep.) Suit No. CA/1/63/84 of 22 May 1985; *Olaniyan v. University of Lagos* [1985] 2 N.W.L.R. 599; *Garba v. University of Maiduguri* [1986] 1 N.W.L.R. 550; etc.

3. Although the first university, the University of Ibadan, was established as early as 1948, there were no incidents of visitation until the great university crises of 1978 which engulfed the entire country. It was when the government set up various enquiries to look into the crises and the resultant mass dismissal of lecturers that people started to realise that the “ivory tower” itself was vulnerable to executive discipline.

4. Usually the Head of State of the Federation or the Governor of a State. The office of the Visitor is held *ex officio* in Nigeria by whoever is for the time being the holder of these offices.

5. See generally Bridge, “Keeping Peace in the Universities: The Role of the Visitor” (1970) 86 L.Q.R. 531; Smith, “The Exclusive Jurisdiction of the University Visitor” (1981) 97 L.Q.R. 610; Ricquier, “The University Visitor” (1977–78) 4 Dalhousie L.J. 647, and Pound, “Visitatorial Jurisdiction Over Corporations in Equity” (1936) 49 Harv. L.R. 369.

6. See *A.-G. v. St Cross Hospital* (1853) 17 Beav. 435, where it was held that the office of the Visitor has become nominal.

office was shattered when as a result of the squabbles that became the pastime of Nigerian university campuses in the 1980s, the Visitor, purporting to exercise his "powers of a Visitor" instituted a series of "visitations"<sup>7</sup> into the management of the universities, with frightening consequences to the hitherto cherished concept of academic freedom<sup>8</sup> and the related issue of professorial tenure.<sup>9</sup>

The stance taken by this article is that the phenomenon of visitation and the issue of the powers of the Visitor *vis-à-vis* the relationship of this jurisdiction with the regular courts of law can be properly understood only when discussed against the socio-political environment that brought it into being.<sup>10</sup> Historical authorities<sup>11</sup> and judicial pronouncements<sup>12</sup> on the nature and role of the office of the Visitor point conclusively to the fact that it originated from the feudal political situation of England in the Middle Ages.<sup>13</sup> And as with most other ancient developments in England, the institution of the Visitor has adapted itself to modern conditions.

It will be recalled that during the feudal era status, rather than contract, was the basis of social relations. It was therefore possible for certain bodies to be established and invested with the power to make arrangements for their internal management by making use of their private rules or statutes quite apart from the general law.<sup>14</sup> It was usual at that period for specialised corporations to be established with considerable immunities from the general law of the realm.<sup>15</sup> English university colleges belonged to this category of private corporations. To avoid anarchy within these closed institutions, the Crown found it necessary to appoint Visitors to oversee their management and discipline.

7. See S.I. Nos.15, 16, 17, 18 and 19 of 1986, which established a visitation for the Universities of Ibadan, Zaria, Lagos, Ife and Benin respectively.

8. See Okwechime, "Academic Freedom and Tenure in Nigeria", an unpublished paper read before the University of Benin Faculty of Law Seminar Series, 1986. Also see Beale, *A History of Freedom of Teaching in American Schools* (1941); "Academic Freedom—An Emerging Constitutional Right" (1963) 28 *Law & Contemp. Prob.* 447; Joughin, "Academic Due Process", *idem*, p.578; Chorley, "Academic Freedom in the UK", *idem*, p.647 and "Developments in the Law of Academic Freedom" (1968) 81 *Harv. L.R.* 1045.

9. Okwechime, *ibid.* Also Wade, "Judicial Control of Universities" (1969) 85 *L.Q.R.* 469, Shyllon, *op. cit. supra* n.2.

10. See Moore, *Introduction to English Canon Law* (1967) Burn, *Ecclesiastical Law* (2nd edn, 1767) Vol.IV; *English and Empire Digest*, Vol.8(1), Part IX; and *A.-G. v. Ewelme Hospital* (1853) 17 *Beav.* 366.

11. See Holdsworth, *History of English Law*, Vol.IX, pp.57-58; Tudor, *Charities* (16th edn), pp.317-331; *Halsbury's Laws of England* (4th edn), Vol.5, pp.509 *et seq.*, etc.

12. As early as 1694, the court in *Philips v. Bury* (1694) 1 *Ld. Raym.* 5 had recognised the office of the Visitor. Here Sir John Holt CJ had already outlined the functions of the office of Visitor under the common law. See also *St John's College, Camb. v. Todington* (1757) 1 *Burr.* 158, especially the view of Lord Mansfield at p.200, and *R. v. Bishop of Ely* (1794) 5 *T.R.* 475.

13. Holdsworth, *op. cit. supra* n.11.

14. See Bridge, *op. cit. supra* n.5.

15. The position was succinctly put by Holt CJ when he said that "the office of Visitor by the common law to judge according to the statutes of the college, and to expel and deprive on just occasions . . . his determinations are final and examinable in no other court whatsoever" in *Philips v. Bury* (1694) Holt K.B. 715.